

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALLEN & OVERY LLP,	:	
	:	<u>SUMMONS</u>
Plaintiff,	:	
	:	Index No.: /2019
v.	:	
	:	Plaintiff designates New York County
MULTINER S.A., and TERMELETRICA	:	as the place of trial
ITAPEBI S.A.,	:	
	:	The basis of venue is Plaintiff's principal office: 1221
Defendants.	:	Avenue of the Americas, New York, NY 10020
	:	
	:	Date Index No. Purchased: April 22, 2019


TO THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the Complaint of the Plaintiff herein and to serve a copy of your answer, or if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York).

PLEASE TAKE FURTHER NOTICE THAT in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: White Plains, New York
April 22, 2019

MENZ BONNER KOMAR & KOENIGSBERG LLP

By: 
Patrick D. Bonner, Jr.
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One North Lexington Avenue, Suite 1550
White Plains, New York 10601
Tel.: (914) 949-0222

Attorneys for Plaintiff Allen & Overy LLP

DEFENDANT(S) ADDRESSES:

MULTINER S.A.
Rua da Assembleia
66-17/18 Andares
Centro 20011-000 Rio de Janeiro, Brazil

TERMELETRICA ITAPEBI S.A.,
Rua da Assembleia
66-17/18 Andares
Centro 20011-000 Rio de Janeiro, Brazil

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALLEN & OVERY LLP,	:	
	:	
Plaintiff,	:	<u>COMPLAINT</u>
	:	
v.	:	Index No.: /2019
	:	
MULTINER S.A., and TERMELETRICA	:	<u>DEMAND FOR JURY TRIAL</u>
ITAPEBI S.A.,	:	
	:	
Defendants.	:	

Plaintiff Allen & Overy LLP ("A&O," or "Plaintiff"), by and through its attorneys, Menz Bonner Komar & Koenigsberg LLP, as and for its Complaint against defendants Multiner S.A. ("Multiner") and Termeletrica Itapebi S.A. ("Termeletrica")(collectively, "Defendants"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action by the Plaintiff law firm to recover monetary damages against Defendants – former clients of A&O – for unpaid legal fees.
2. A&O rendered professional legal services to Defendants and issued proper invoices for such services. A&O's invoices have gone unpaid despite repeated demands.

THE PARTIES

3. Plaintiff Allen & Overy LLP is an international law firm with offices at 1221 Avenue of the Americas, New York, NY 10020.
4. Defendant Multiner S.A. is a foreign corporation duly registered in Brazil. Multiner has offices located at Rua da Assembleia, 66-17/18 Andares, Centro 20011-000 Rio de Janeiro, Brazil.

5. Defendant Termeletrica Itapebi S.A. is a foreign corporation duly registered in Brazil. Termeletrica has offices located at Rua da Assembleia, 66-17/18 Andares, Centro 20011-000 Rio de Janeiro, Brazil.

JURISDICTION AND VENUE

6. Personal jurisdiction over Defendants is proper pursuant to CPLR §§ 301 and 302. In addition, Defendants have consented to the jurisdiction of the New York courts.

7. Venue is proper in New York County pursuant to CPLR § 503 in that at least one party resides in this county.

8. As the amount in controversy exceeds \$50,000, there is no jurisdiction for arbitration pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of the State of New York.

FACTS

9. On or about January 13, 2012, Plaintiff and Defendants entered into a retention agreement for the provision of professional legal services (the "Engagement Letter").

10. The Engagement Letter set forth the terms and conditions under which A&O would represent Defendants and provide legal services to Defendants in connection with an arbitration involving the company Caterpillar Motoren GmbH & Co. KG.

11. Ms. Roseanne Santos, Diretora Juridica e Regulatorio, executed the Engagement Letter on behalf of both Multiner and Termeletrica.

12. Attorney Louis B. Kimmelman, a Partner in A&O's New York offices, executed the Engagement Letter on behalf of A&O.

13. Pursuant to the Engagement Letter, A&O provided legal services to Defendants through approximately August of 2013.

14. In connection with its legal work for Defendants, A&O issued nine (9) separate invoices to Defendants dated January 15, 2013, February 11, 2013, April 22, 2013, April 22, 2013, May 9, 2013, June 4, 2013, July 31, 2013, August 7, 2013, and August 28, 2013.

15. On or about September 13, 2013, Defendants partially paid the January 15, 2013 invoice, the February 11, 2013 invoice, and one of the April 22, 2013 invoices. There remain balances due on those invoices, and all other invoices remain unpaid.

16. The unpaid balances and unpaid invoices together amount to \$1,251,827.14.

17. A&O has made repeated demands for payment of all balances due and all unpaid invoices, but Defendants have failed and refused to pay.

18. Defendants have never disputed their obligation to pay the outstanding balances and invoices.

19. Defendants have expressly acknowledged that the outstanding balances and outstanding fees are due and owing to A&O.

FIRST CAUSE OF ACTION
(Breach of Contract)

20. A&O incorporates by reference and repeats and realleges the allegations of Paragraphs 1 through 19 of the Complaint above as if fully set forth herein.

21. A&O entered into a legal and binding contract – the Engagement Letter – with Defendants.

22. Pursuant to the Engagement Letter, A&O agreed to provide professional legal services to Defendants, and Defendants agreed to pay for such services.

23. A&O fulfilled all of its obligations under the Engagement Letter by, among other things, providing professional legal services to Defendants as called for by the Engagement Letter.

24. Pursuant to the Engagement Letter, A&O issued nine (9) separate invoices to Defendants, which Defendants agreed to pay.

25. Defendants have partially paid only three of the nine invoices, and have failed and refused to pay the remaining invoices.

26. Defendants have breached the Engagement Letter with A&O.

27. By reason of the foregoing breach of contract, A&O has suffered damages in the amount of \$1,251,827.14, plus interest, attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION
(Account Stated)

28. A&O incorporates by reference and repeats and realleges the allegations of Paragraphs 1 through 27 of the Complaint above as if fully set forth herein.

29. Pursuant to the Engagement Letter, A&O issued nine (9) separate invoices to Defendants for the provision of professional legal services.

30. The nine (9) separate invoices that A&O issued to Defendants constituted the presentment of an account to Defendants.

31. Defendants acknowledged receipt of the nine invoices and accepted all of the invoices as correct, and in fact partially paid three of the nine invoices.

32. Defendants promised to pay all outstanding balances and all unpaid invoices.

33. Defendants have never disputed that the unpaid balances and unpaid invoices are due and owing to A&O.

34. Defendants are liable to A&O for Account Stated.

35. By reason of the foregoing, A&O has suffered damages in the amount of \$1,251,827.14, plus interest, attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION
(Quantum Meruit)

36. A&O incorporates by reference and repeats and realleges the allegations of Paragraphs 1 through 35 of the Complaint above as if fully set forth herein.

37. As set forth herein, A&O performed professional legal services for and on behalf of Defendants in good faith.

38. Defendants accepted those professional legal services and expressly authorized A&O to perform such services on behalf of Defendants.

39. A&O reasonably expected to be compensated for such professional legal services.

40. By reason of the foregoing, A&O has suffered damages, including the loss of the reasonable value of its services, in the amount of \$1,251,827.14, plus interest, attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

41. A&O incorporates by reference and repeats and realleges the allegations of Paragraphs 1 through 40 of the Complaint above as if fully set forth herein.

42. As set forth herein, A&O rendered professional legal services to Defendants pursuant to the Engagement Letter.

43. Defendants accepted those professional legal services but have refused to pay for them.

44. As a result, Defendants were unjustly enriched.

45. By reason of the foregoing, A&O has suffered damages, in the amount of \$1,251,827.14, plus interest, attorneys' fees and costs.

RELIEF REQUESTED

WHEREFORE, Plaintiff A&O respectfully requests that the Court (i) enter judgment on each of the causes of action set forth herein in the amount of \$1,251,827.14, plus interest, attorneys' fees and costs of suit; and (ii) granting such other and further relief as the Court deems just and proper, including the costs, disbursements and legal fees necessarily and reasonably incurred by A&O in connection with this lawsuit.

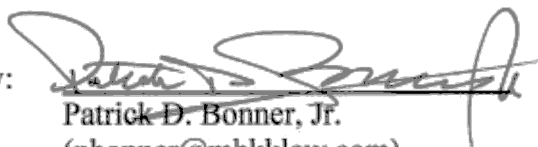
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any and all issues so triable.

Dated: White Plains, New York
April 22, 2019

MENZ BONNER KOMAR & KOENIGSBERG LLP

By:



Patrick D. Bonner, Jr.
(pbonner@mbkklaw.com)
Melissa K. Driscoll
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